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# MONTANA LEGISLATIVE HISTORY

Chapter 424 19 93

Bill H 157 S _____ Original bill & history ✓ C

| H. Committee on Judiciary | | | S. Committee on Judiciary | | |
|---|---|---|---|---|---|
| Hearing Date(s) | Jan 20 | ✓ C | Hearing Date(s) | Mar 22 | ✓ C |
| | Feb 12 | ✓ C | | Mar 26 | ✓ C |
| | Feb 17 | ✓ C | | _____ | ___ C |
| | _____ | ___ C | | _____ | ___ C |
| Date Out | Feb 12 | ✓ C | | Mar 28 | ✓ C |

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

HB 157 INTRODUCED BY VOGEL, ET AL.

AUTHORIZE SEIZURE AND FORFEITURE OF MOTOR VEHICLES FOR THIRD OR SUBSEQUENT VIOLATIONS OF DUI OR DRUGS

| | | | |
|---|---|---|---|
| 1/13 | INTRODUCED | | |
| 1/13 | REFERRED TO JUDICIARY | | |
| 1/13 | FIRST READING | | |
| 1/13 | FISCAL NOTE REQUESTED | | |
| 1/19 | FISCAL NOTE RECEIVED | | |
| 1/19 | FISCAL NOTE PRINTED | | |
| 1/20 | HEARING | | |
| 2/12 | TABLED IN COMMITTEE | | |
| 2/18 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 2/20 | 2ND READING PASSED AS AMENDED | 66 | 34 |
| 2/23 | 3RD READING PASSED | 58 | 41 |
| | TRANSMITTED TO SENATE | | |
| 3/01 | FIRST READING | | |
| 3/01 | REFERRED TO JUDICIARY | | |
| 3/22 | HEARING | | |
| 3/30 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED | | |
| 3/31 | 2ND READING CONCURRED | 43 | 6 |
| 4/01 | 3RD READING CONCURRED | 39 | 9 |
| | RETURNED TO HOUSE WITH AMENDMENTS | | |
| 4/05 | 2ND READING AMENDMENTS CONCURRED | 66 | 33 |
| 4/07 | 3RD READING AMENDMENTS CONCURRED | 61 | 39 |
| 4/17 | SIGNED BY SPEAKER | | |
| 4/17 | SIGNED BY PRESIDENT | | |
| 4/20 | TRANSMITTED TO GOVERNOR | | |
| 4/22 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 474 | | |
| | EFFECTIVE DATE: 10/01/93 | | |

HB 158 INTRODUCED BY KADAS, ET AL.

GENERALLY REVISE LAWS RELATING TO ALTERNATIVE HEALTH CARE BOARD

BY REQUEST OF ALTERNATIVE HEALTH CARE BOARD

| | | | |
|---|---|---|---|
| 1/13 | INTRODUCED | | |
| 1/13 | REFERRED TO HUMAN SERVICES & AGING | | |
| 1/13 | FIRST READING | | |
| 1/18 | HEARING | | |
| 1/20 | COMMITTEE REPORT—BILL PASSED | | |
| 1/22 | 2ND READING PASSED AS AMENDED | 96 | 2 |
| 1/25 | 3RD READING PASSED | 95 | 2 |
| | TRANSMITTED TO SENATE | | |
| 1/27 | FIRST READING | | |
| 1/27 | REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY | | |
| 2/09 | FISCAL NOTE REQUESTED | | |
| 2/13 | FISCAL NOTE RECEIVED | | |
| 2/15 | FISCAL NOTE PRINTED | | |
| 3/15 | HEARING | | |
| 3/22 | COMMITTEE REPORT—BILL CONCURRED | | |
| 3/24 | 2ND READING CONCURRED | 50 | 0 |
| 3/25 | 3RD READING CONCURRED | 49 | 0 |
| | RETURNED TO HOUSE | | |
| 4/02 | SIGNED BY SPEAKER | | |
| 4/06 | SIGNED BY PRESIDENT | | |
| 4/07 | TRANSMITTED TO GOVERNOR | | |
| 4/12 | SIGNED BY GOVERNOR | | |

HOUSE BILL NO. 157

INTRODUCED BY VOGEL, TOWE, CLARK,
J. JOHNSON, YELLOWTAIL

IN THE HOUSE

| | |
|---|---|
| JANUARY 13, 1993 | INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY. |
| | FIRST READING. |
| FEBRUARY 18, 1993 | COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. |
| FEBRUARY 19, 1993 | PRINTING REPORT. |
| FEBRUARY 20, 1993 | SECOND READING, DO PASS AS AMENDED. |
| FEBRUARY 22, 1993 | ENGROSSING REPORT. |
| FEBRUARY 23, 1993 | THIRD READING, PASSED. AYES, 58; NOES, 41. |
| FEBRUARY 24, 1993 | TRANSMITTED TO SENATE. |

IN THE SENATE

| | |
|---|---|
| MARCH 1, 1993 | INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY. |
| | FIRST READING. |
| MARCH 30, 1993 | COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED. |
| MARCH 31, 1993 | SECOND READING, CONCURRED IN. |
| APRIL 1, 1993 | THIRD READING, CONCURRED IN. AYES, 39; NOES, 9. |
| | RETURNED TO HOUSE WITH AMENDMENTS. |

IN THE HOUSE

| | |
|---|---|
| APRIL 5, 1993 | SECOND READING, AMENDMENTS CONCURRED IN. |
| APRIL 7, 1993 | THIRD READING, AMENDMENTS |

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 157

INTRODUCED BY Randy Vogel Bore, Clark, Yellowtail

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTIES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AUTHORIZING SEIZURE AND FORFEITURE OF MOTOR VEHICLES FOR THIRD OR SUBSEQUENT VIOLATIONS OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTION 61-8-714, MCA."

WHEREAS, Officer Mark Cady, 29 years old, is a 3-year veteran of the Billings Police Department; and

WHEREAS, Officer Cady is married and the father of two young children; and

WHEREAS, in the early morning hours of September 19, 1992, Officer Cady was seriously injured in a traffic accident while on duty; and

WHEREAS, the traffic accident occurred while an intoxicated driver was fleeing the scene of a personal injury accident; and

WHEREAS, Officer Cady's patrol car was hit at a high rate of speed by the fleeing driver; and

WHEREAS, the driver of the fleeing vehicle was intoxicated at the time of the accident and had a prior conviction for driving under the influence of alcohol or drugs; and





WHEREAS, Officer Cady and his family have suffered terribly because of the actions of an irresponsible driver involved in an alcohol-related traffic offense; and

WHEREAS, the community and the people of the state of Montana have been deprived of the loyal and continuous services of a dedicated public servant; and

WHEREAS, driving under the influence of alcohol or drugs remains a serious problem in this state and current penalties often do not deter multiple violations of the DUI laws; and

WHEREAS, in Montana during 1991, 92 victims died and 2,000 individuals were injured in alcohol- or drug-related accidents; and

WHEREAS, additional penalties for multiple offenders may deter multiple violations and prevent the kind of tragedy that Officer Cady and his family have suffered and may prevent other families from suffering in the same way.

THEREFORE, the Legislature finds it fitting to enact the following legislation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs. (1) Except as provided in subsections (7)



HB 157 INTRODUCED BILL

and (8), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(2) Except as provided in subsection (7), on a second conviction, ~~he~~ the person shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection (7), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) (a) Except as provided in subsection (7), on the third or subsequent conviction, ~~he~~ the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less than $500 or more than $1,000. Except as provided in subsection (7), notwithstanding any provision to the contrary providing for suspension of execution of a sentence





imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be forfeited as provided under [sections 2 through 9].

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) In addition to the punishment provided in this

section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of ~~his~~ the defendant's choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to ~~his~~ the defendant's alcohol problem, as determined by the judge





based upon the recommendation from the certified chemical dependency counselor.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility

made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

NEW SECTION. **Section 2. Seizure and forfeiture of vehicle -- notice -- release.** (1) A motor vehicle subject to forfeiture under 61-8-714(3)(b) may be seized for forfeiture by a law enforcement officer on process, including a seizure warrant, issued by a court pursuant to law.

(2) If a motor vehicle is seized for forfeiture under this section, pending forfeiture and final disposition, the seizing officer's employing agency may do one of the following:

(a) remove the motor vehicle to a storage area for





safekeeping;

(b) remove the motor vehicle to a place designated by the court; or

(c) provide for another custodian or agency to take custody of the motor vehicle and remove it to an appropriate location within the jurisdiction of the court.

(3) As soon as practicable after a vehicle is seized for forfeiture under this section, the seizing officer's employing agency shall conduct an inventory and estimate the value of the vehicle. Within 20 days of seizure, the agency shall give notice of the seizure for forfeiture to the registered owner and any holder of a perfected security interest in the seized vehicle.

(4) The notice required by subsection (2) must contain the following:

(a) a description of the vehicle, including the year built and the vehicle identification number;

(b) the name of the registered owner;

(c) the date and nature of the violation that is the basis of possible forfeiture;

(d) the telephone number and address where additional information may be obtained; and

(e) a statement that the vehicle is subject to forfeiture.

NEW SECTION. **Section 3. Commencement of proceedings.**

(1) In the event of a seizure for forfeiture under [section 2], the seizing agency shall send to the city or county attorney a written request for forfeiture within 20 days of the seizure. The request must include a statement of facts and circumstances of the seizure including the names of witnesses then-known, the appraised or estimated value of the motor vehicle, and a summary of the facts relied on for forfeiture.

(2) The city or county attorney shall determine whether it is probable that the motor vehicle is subject to forfeiture and, if so, may cause the initiation of uncontested or judicial proceedings against the owner or claimant of the motor vehicle. If on inquiry and examination the attorney determines that the proceedings probably cannot be sustained or that justice does not require the institution of forfeiture proceedings, the attorney shall notify the seizing agency and immediately authorize the release of the seizure for forfeiture on the motor vehicle or on any specified interest in it.

(3) If the city or county attorney fails to initiate forfeiture proceedings against the owner or claimant of the motor vehicle seized for forfeiture by issuing a notice of pending forfeiture within 75 days after seizure, the motor vehicle must be released from its seizure for forfeiture on the request of an owner or claimant.





NEW SECTION. **Section 4.** **Petition to institute forfeiture proceedings -- summons -- service.** The city or county attorney shall, within 75 days of the seizure, file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party. The petitioner shall cause the summons to be served upon all owners or claimants of the motor vehicle by one of the following methods:

(1) upon an owner or claimant whose name and address are known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure; or

(2) upon an owner or claimant whose address is unknown but who is believed to have an interest in the motor vehicle, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county and by mailing a copy of the petition and summons to the most recent address of the owner or claimant, if any, shown in the records of the department of justice.

NEW SECTION. **Section 5.** **Answer to allegations concerning use of motor vehicle.** Within 20 days after the

service of the petition and summons or publication of the summons, as provided in [section 4], the owner or claimant of the seized motor vehicle shall file an answer to the allegations concerning the use of the motor vehicle described in the petition. Failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

NEW SECTION. **Section 6. Presumption -- procedure following answer or expiration of time for answering.** (1) There is a rebuttable presumption of forfeiture for all motor vehicles ordered to be forfeited under 61-8-714, except motor vehicles exempted under 61-8-714(3)(b)(ii).

(2) If an answer to the petition is not filed within 20 days after the service of the petition and summons or publication of the summons, the court upon motion shall order the motor vehicle forfeited to the city or county.

(3) If an answer is filed within 20 days, the forfeiture proceedings must be set for hearing without a jury no sooner than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service of the petition and summons.

NEW SECTION. **Section 7. Proof required or permitted at hearing.** In order to rebut the presumption of forfeiture:

(1) an owner of a seized motor vehicle who has an





answer on file shall prove that the motor vehicle was not used in a third or subsequent violation of 61-8-401;

(2) an owner who has an answer on file shall prove that the vehicle is exempt under 61-8-714(3)(b)(ii); or

(3) a claimant of a security interest in the motor vehicle who has an answer on file shall prove that the claimant's security interest is bona fide and perfected under 61-3-103.

NEW SECTION. **Section 8. Disposition of motor vehicle following hearing.** (1) If the court finds that the motor vehicle was not operated in a third or subsequent violation of 61-8-401 or that the motor vehicle was exempt under 61-8-714(3)(b)(ii), it shall order the motor vehicle released to the owner of record as of the date of the seizure.

(2) The purpose of [sections 2 through 9] is to forfeit only the right, title, or interest of the owner. If the court finds that the motor vehicle was being operated in a third or subsequent violation of 61-8-401, that the motor vehicle was used with the knowledge or consent of the owner, and that proper proof of a claim was presented at the hearing by the holder of a security interest, the court shall order the motor vehicle released to the holder of the security interest if the amount due the holder is equal to or in excess of the value of the motor vehicle as of the

date of seizure. If the amount due the holder of the security interest is less than the value of the motor vehicle, the motor vehicle, if it is sold, must be sold at public auction by the law enforcement agency that seized the motor vehicle in the same manner provided by law for the sale of property under execution or the law enforcement agency may return the motor vehicle to the holder of the security interest without proceeding with an auction. The motor vehicle may not be sold to an officer or employee of the law enforcement agency that seized the motor vehicle or to a person related to an officer or employee by blood or marriage.

(3) In making a disposition of a motor vehicle under [sections 2 through 9], the court may take any action to protect the rights of innocent persons.

NEW SECTION. **Section 9.** **Disposition of proceeds of sale.** (1) Whenever a motor vehicle is seized, forfeited, and sold under the provisions of [sections 2 through 9], the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the motor vehicle; and

(b) the remainder, if any, to the county treasurer of the county in which the motor vehicle was seized, who shall establish and maintain a motor vehicle forfeiture account





and deposit the remainder into the account, except as provided in subsection (1)(e);

(c) if the motor vehicle was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, who shall establish and maintain a motor vehicle forfeiture account and deposit the remainder into the account, except as provided in subsection (1)(e);

(d) if the motor vehicle was seized by an employee of the state, the remainder, if any, to an account in the state special revenue fund to the credit of the department of justice, except as provided in subsection (1)(e); or

(e) if the motor vehicle was seized as a result of the efforts of more than one law enforcement agency, the remainder, if any, to the accounts required by this subsection (1), pro rata in the proportions represented by the agencies' expenses of investigation.

(2) Money received under subsection (1) and deposited in a county, city, or town motor vehicle forfeiture account must in each fiscal year be appropriated to and may be expended by the applicable agency for purposes of law enforcement.

NEW SECTION. **Section 10.** **Codification instruction.** [Sections 2 through 9] are intended to be codified as an integral part of Title 61, chapter 8, part 4, and the

provisions of Title 61, chapter 8, part 4, apply to [sections 2 through 9].

-End-

**REP. VIVIAN BROOKE** asked **Anne Gilkey** if it is a requirement that the parent/guardian having legal custody of a child receive legal counseling services, and how often is that used in a temporary situation? **Ms. Gilkey** said depending on the situation, it's available if warranted. It is paid for by insurance and mental health centers. The DFS would not require counseling if a family could not pay for it.

Closing by Sponsor:

**REP. PECK** said this is a very small area being discussed, very limited in scope. It is a protection situation where a child is in an abusive situation needing a temporary investigative authority of courts. A judge makes a lot of determinations in a court setting, and when he hears hearsay testimony, he is going to make a judgement as to the value of that, depending on the character, the knowledge, and the immediate acquaintance of the person who is testifying.

## HEARING ON HB 157

Opening Statement by Sponsor:

**REP. RANDY VOGEL, HD 86, Billings.** A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTIES FOR DRIVING UNDER THE INFLUENCE OR ALCOHOL OR DRUGS; AUTHORIZING SEIZURE AND FORFEITURE OF MOTOR VEHICLES FOR THEIR THIRD SUBSEQUENT CONVICTION OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTION 61-8-714, MCA."

This may be a radical approach, but it has been proven effective. It's patterned after Arizona's and Oregon's DUI laws. The motor vehicle operated at the time of the offense may be forfeited. If a vehicle is seized, the law enforcement agency may remove the vehicle to a storage area for safe keeping, remove the vehicle to an area designated by the court or provide for another custodian or agent to take custody of the vehicle and move it to an appropriate location within the jurisdiction of the court. An estimated value is taken of the vehicle, and within 20 days of the seizure, the offender is given notice of the seizure as is any person or entity with vested security interests. After 20 days of seizure, a written request has to be sent to the county or city attorneys. They shall assume probable cause that the vehicle is actually subject to forfeiture, and at that point, they initiate proceedings. If the attorney decides that there isn't any probable cause, he shall notify the agency and immediately authorize the release of the vehicle. EXHIBIT 1.

Proponents' Testimony:

SEN. TOM TOWE, SENATE DISTRICT 46, Billings, said he generally does not support forfeiture of property in connection with criminal offenses because there can be horrendous results. REP. VOGEL has pointed out law enforcement has tried and tried to

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0157, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act revising the penalties for driving under the influence of alcohol or drugs (DUI); authorizing seizure and forfeiture of motor vehicles for third or subsequent violations of driving under the influence of alcohol or drugs.

ASSUMPTIONS:

1. There is an average of 7,600 DUI convictions in the state annually.
2. 7.5% of these convictions are third or subsequent DUI convictions of persons who drive his or her own vehicle (7600 x 7.5%) which would result in 570 vehicles confiscated each year.
3. 10% of the vehicles confiscated would be "junk" vehicles, vehicles contested in court and returned, and lien-holder acquisitions for debts with no residual value. This assumption reduces the number of confiscated vehicles to 90% of the total in assumption 2 (570 x .90) to 513 annually. This estimate is then rounded to 500.
4. The average net sale proceeds of vehicles confiscated, after estimating the expenses of towing, storing, lien clearance and sale, will be $500 per vehicle. The estimated average would generate $250,000 in revenue annually (500 x $500).
5. Distribution of convictions and net sale proceeds by agency would be 46% police, 23% county sheriffs, 26% Montana Highway Patrol, 2% Bureau of Indian Affairs (BIA) Police, and 3% other agencies including the Department of Fish, Wildlife and Parks, et al.
6. The revenue estimate is based upon estimated net sale proceeds. Estimates of increased expenditures necessary to seize and dispose of the vehicles by agency are not subject to reasonable determination.
7. Sale proceeds credited to the Highway Patrol, Dept. of Justice, will be deposited in a new state special revenue account.

FISCAL IMPACT:

Revenue:

| | FY '94 | | | FY '95 | | |
|---|---|---|---|---|---|---|
| | Current Law | Proposed Law | Difference | Current Law | Proposed Law | Difference |
| City/town vehicle forfeiture accounts | 0 | $115,000 | $115,000 | 0 | 115,000 | 115,000 |
| County vehicle forfeiture accounts | 0 | 57,500 | 57,500 | 0 | 57,500 | 57,500 |
| Highway Patrol state special rev (02) | 0 | 65,000 | 65,000 | 0 | 65,000 | 65,000 |
| Federal Bureau of Indian Affairs | 0 | 5,000 | 5,000 | 0 | 5,000 | 5,000 |
| Other state agencies state special (02) | 0 | 7,500 | 7,500 | 0 | 7,500 | 7,500 |
| Total | 0 | $250,000 | $250,000 | 0 | $250,000 | $250.000 |
| Net impact state special revenue | | | 72,500 | | | 72,500 |

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: Increased annual revenue of approximately $172,500 for local law enforcement agencies as shown in the table above.

David Lewis 1-19-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Randy Vogel 1-19-93
RANDY VOGEL, PRIMARY SPONSOR DATE

Fiscal Note for HB0157, as introduced.

HB 157

reduce DUI offenses, i.e. suspend the owner's drivers license, drivers education courses, fines, jail sentence, and cancelling offender's insurance. This bill is designed only to allow forfeiture of the car owned and operated by the defendant. There's an exception to that. If the car is not owned by the offender, and if the owner is aware of the violation, that car can be forfeited as well. **REP. TOWE** included amendments to make it clear that this is, in fact, what will happen. The intention is not to seize an innocent person's car, but to take the driving privileges away from a DUI offender. After that person has been convicted of the third DUI, law enforcement can obtain a search warrant and seize the vehicle. After the vehicle is seized, within 20 days, law enforcement will notify all registered owners, all the secured parties, and the county attorney of the forfeiture. The county attorney has 75 days in which to do something. If the county attorney decides he does not have a case to seize the vehicle, and doesn't do anything within 75 days, the vehicle is automatically released. If the county attorney files a petition within 75 days, then that starts a legal proceeding. Then a hearing will be held within 60 days. If, in fact, it is decided in the hearing that the vehicle should be forfeited, at that point, there's a sale, and after the sale, the proceeds are disbursed to a secured party, second to the entity who is responsible for seizing the vehicle. In other words, if the vehicle is seized within the county, it goes to that county. If it's seized within the city, it goes to that city.

**Officer Mark Cady, Police Officer, City of Billings.** Officer Cady works the night shift as a police office for the city of Billings. On September 19, 1992, Officer Cady was dispatched on an armed robbery in progress. As he responded to that call, he was hit by a 22-year old male who ran a red light. He doesn't remember much after that. He spent 17 days in intensive care, 28 hours of surgery, broke almost every bone in his face, broke his jaw, broke most of his ribs, collapsed both his lungs, punctured his stomach and intestines, shredded his liver, broke his arms and legs and compacted a disk in his back. The person who hit Officer Cady was a multiple DUI offender who still had his car, and he had just been involved in another accident approximately five minutes before he hit Officer Cady. This person had not used any of his DUIs as a learning experience. In Officer Cady's experience as police officer, he has seen many DUI repeat offenders. In 1992, he had given a DUI offender his seventh DUI; he's still driving. It doesn't make any difference to take the driver's license away, DUI offenders will still drive without their licenses. Many DUI offenders don't have automobile insurance and they can no longer apply for it. The person that hit **Officer Cady** did not have insurance, but fortunately for **Officer Cady**, the State Worker's Compensation Fund is paying for doctor bills reaching $500,000. DUI offenders make a joke out of their DUIs. Many return to drinking and driving immediately after their jail sentence or DUI courses. **Officer Cady** said DUI offenders never really think about what they're doing until they

hit someone like himself or kill someone. The second DUI offense in Idaho is a felony. **Officer Cady** believes this bill is a good start.

**Mark Staples, Montana Tavern Association (MTA)**, said the MTA believes the firmest measures possible need to be used for DUIs. A DUI for the first time offender is sobering, humiliating, frightening, memorable, and a financial catastrophe, and it takes away a number of that person's rights. If an offender is on his third offense, there is no question, either by a common sense approach or a clinical definition, that this person is a problem drinker. The question is this: Does this bill take care of the problem drinker? If the vehicle is taken away from the problem drinker or DUI offender, he will find another car to use. Common carriers are exempted, and the banks are protected. Is the family protected from this? The family takes the abuse from this alcoholic person in the first place. **Mr. Staples** would entrust this bill to try to consider the potential damaging effects to innocent families.

**Bill Fleiner, Montana Sheriffs and Peace Officers Association, (MSPOA)** claimed the civil departments and sheriffs are a more appropriate avenue to handle DUI forfeiture offenses and are set up to handle this problem. The State Highway Patrol may have to create a position to handle various mechanical issues. Sheriff's fees and the civil process are already established, and the sale of the vehicle is given to the appropriate agency who's involved in the forfeiture.

**REP. TIM SAYLES, EMT/Firefighter**, stated he has 21 years of emergency technician and firefighter service. He described an accident where, a driver convicted of a DUI for the sixth time, traveling at 60 mph totaled a county sheriffs vehicle and killed two patrol officers. The officers were dispatched with a warning that a drunk driver was on the road. Unfortunately, the officers could not avoid the drunk driver and were killed.

**Capt. George Olson, Helena Police Dept. (also speaking on behalf of Billings Chief of Police)**, reported there's an arrest in excess of 425 DUI drivers every year in Helena, . The city of Billings arrests in excess of 1,000 DUI drivers every year. In Helena, 50 percent of those are repeat offenders. In Billings, the statistics are 60 percent repeat offenders. **Capt. Olson** has seen over the years that alcohol treatment hasn't worked. **EXHIBIT 2**

**REP. BOB CLARK, HD 31, Ryegate**, stated when he was a patrol officer in the early seventies, people started taking notice of the DUI problem. There were many suggestions in place, one of which was to take away the license plates, but they never considered forfeiting the vehicle. **REP. CLARK** said we're only talking about third offense DUIs and the ones that were caught and convicted. He is more concerned about finding a solid solution for people that are driving with multiple convictions

with DUIs. **REP. CLARK** supports the sheriff's civil process handling of forfeiture.

**Peter Funk, Asst. Attorney General, Dept. of Justice,** said drinking and driving statutes were passed in 1989, and the sanctions for penalty for DUI and Blood Alcohol Content (BAC) offenses were identical, because they are essentially the exact same offense. The prosecutor simply uses the BAC charge when a person has a blood alcohol concentration test, which gives them evidence that a person's blood alcohol is .10 or above. There's no difference between these offenses except that someone has taken a blood alcohol test. Currently, in Montana law, if a person is a multiple DUI offender, that person is mandated certain sentencing for treatment. If a person is a multiple BAC offender, there's no sentencing mandate. Some people think that if they take a breathalizer test, they deserve a break. It is recommended to take the test because if the person chooses not to take the test, he will lose his driver's license. No matter what happens to this bill, from the prosecutor's standpoint, the further these two statutes grow apart, the less sense the statutory scheme makes.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

**REP. KARYL WINSLOW** asked **REP. VOGEL** what the intent of the bill is, and as an officer, is a DUI offender required to go through drug/alcohol abuse training. **REP. VOGEL** said the true intent of the bill is to take away the tool of destruction from multiple offenders of DUI laws; and in serious cases to forfeit the vehicle. Police officers go through continuous training. **REP. WINSLOW** finds it interesting that no one from drug and alcohol dependency programs are testifying in favor of this bill, and she asked **REP. VOGEL** if he believed that by forfeiting somebody's vehicle, it will keep multiple DUI offenders off the roads? **REP. WINSLOW** commented that a person convicted of his third DUI offense is clearly having problems with drug and alcohol abuse. **REP. VOGEL** said that by taking away the vehicle, it will take away the weapon, but there's no way to control the alcoholic or drug abuser unless he chooses to be helped.

**REP. JODY BIRD** asked **REP. VOGEL** if caffeine and nicotine are considered addictive drugs. For example, cold tablets are known to cause drowsiness. **REP. VOGEL** said that caffeine, nicotine and over the counter drugs, such as cold tablets, are not included in this bill, unless there has been an overdose. These types of narcotics are included in the drug and alcohol statute.

**REP. DAVE BROWN** asked **REP. VOGEL** in his experience as a police officer in Billings if the penalty for negligent vehicular assault is a $1,000 fine and a year in the county jail. There

are criminal endangerment statutes up to $50,000 and up to ten years in prison, and negligent endangerment statutes with penalties of $1,000 and a year in county jail. Regarding vehicular assault, which happened in the accident described by **Officer Cady**, what happened to the offenders? **REP. VOGEL** said the defendant spent one year for negligent assault for the first accident he was involved in, and he has yet to be adjudicated for the second accident. The person involved in **Officer Cady's** accident was charged with felony criminal endangerment. That doesn't address the second, third and fourth offense.

**REP. BROWN** asked **Mr. Funk** if he could, in the future, provide the number of DUI offenses over the last ten years in Montana for the committee. The description between the divergence between per se and driving under the influence interests **REP. BROWN.** In 1983, he met with **Jean Turnage, Chairman of the Senate Judiciary Committee**, and assisted in writing the statute at the request of prosecutors. This was intentional and has not been revised because the prosecutors said they needed a way to get a quick conviction on a per se and try to essentially bluff people out of taking the longer route to get a conviction due to the technicalities involved. **REP. BROWN** asked **Mr. Funk**, if it is not a good idea to have this information on the books? **Mr. Funk** said the sanctions were identical. **REP. BROWN** said that the statutes were significantly different and the only information added to both areas were increased penalties.

**REP. BROWN** asked if this bill stays the way it is now, is every bank that gives a loan on a car going to have to file a lien against the local sheriff and chief of police, as a matter of course, because nearly every person that drives a car who has a family member driving the car who has a drink can end up in this situation potentially. Banks are going to take a closer look at persons with at least one DUI offense to see whether or not they are protecting their interest. If they have filed that lien, their security interests are protected. The paperwork is going to increase substantially for the sheriff's and police departments. **REP. BROWN** believes bankers may oppose this bill because of the way it's written. **REP. VOGEL** does not know of a

bank that wouldn't have security interest in a vehicle registered. If the bank's name is on that title, they have a secured interest. **REP. BROWN** does not agree with **REP. VOGEL.**

**REP. BOB CLARK** inquired about the Montana Tavern Association's taxi service for people who have had too much to drink and asked **Mr. Staples** if the program is only in effect on holidays or 12 months a year. **Mr. Staples** said it is in effect 12 months a year with increased funding during the holiday season and extra offers such as towing the cars.

**REP. WYATT** asked **REP. VOGEL** if there is any opportunity for incarcerated people to be rehabilitated and enhance their driving abilities, and is there a grace period as to when the car will be returned? **REP. VOGEL** said no, there is no grace period, and a person can not only reapply for a driver's license after rehabilitation but also purchase another car.

**REP. WYATT** is concerned for the teenager of alcoholic parents. She asked what happens if the teenager owns his own car and the parents have access to that car, and how can this teenager keep his parents from taking his car without his permission. **REP. VOGEL** referred to page 13, Section 3, line 13 of the bill to answer **REP. WYATT'S** concerns: In making a disposition of a motor vehicle under (sections 2 through 9), the court may take any action to protect the rights of innocent persons.

Closing by Sponsor:

**REP. VOGEL** closed by emphasizing four main points of the bill: 1) D.A.R.E. has the best program to prevent alcohol abuse for teens; 2) To remove a tool/weapon from the streets for protection of the driver and innocent lives; 3) To add an escape clause for innocent persons and families; and 4) The safety of our citizens outweighs the inconvenience of a DUI.

**CHAIRMAN FAGG** announced to the committee that HB 157 has been assigned to a subcommittee. The subcommittee consists of:
**REP. JIM RICE, CHAIRMAN**
**REP. SCOTT MCCULLOCH**
**REP. BILL TASH**
**REP. DIANA WYATT**

## EXECUTIVE ACTION ON HB 142

Motion: **REP. WYATT MOVED HB 142 DO PASS.**

Discussion:

Rep. **Anderson** met with the Attorney General's office to discuss the attached amendments. **CHAIRMAN FAGG** moved the amendments. EXHIBIT 3. The amendments increase the maximum fine available to a judge to $1,000 for misdemeanors. This doesn't mean the judge

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 1-20-93

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| Rep. Russ Fagg, Chairman | ✓ | | |
| Rep. Randy Vogel, Vice-Chair | ✓ | | |
| Rep. Dave Brown, Vice-Chair | ✓ | | |
| Rep. Jodi Bird | ✓ | | |
| Rep. Ellen Bergman | ✓ | | |
| Rep. Vivian Brooke | ✓ | | |
| Rep. Bob Clark | ✓ | | |
| Rep. Duane Grimes | ✓ | | |
| Rep. Scott McCulloch | ✓ | | |
| Rep. Jim Rice | ✓ | | |
| Rep. Angela Russell | ✓ | | |
| Rep. Tim Sayles | ✓ | | |
| Rep. Liz Smith | ✓ | | |
| Rep. Bill Tash | ✓ | | |
| Rep. Howard Toole | ✓ | | |
| Rep. Tim Whalen | | ✓ | |
| Rep. Karyl Winslow | ✓ | | |
| Rep. Diana Wyatt | ✓ | | |
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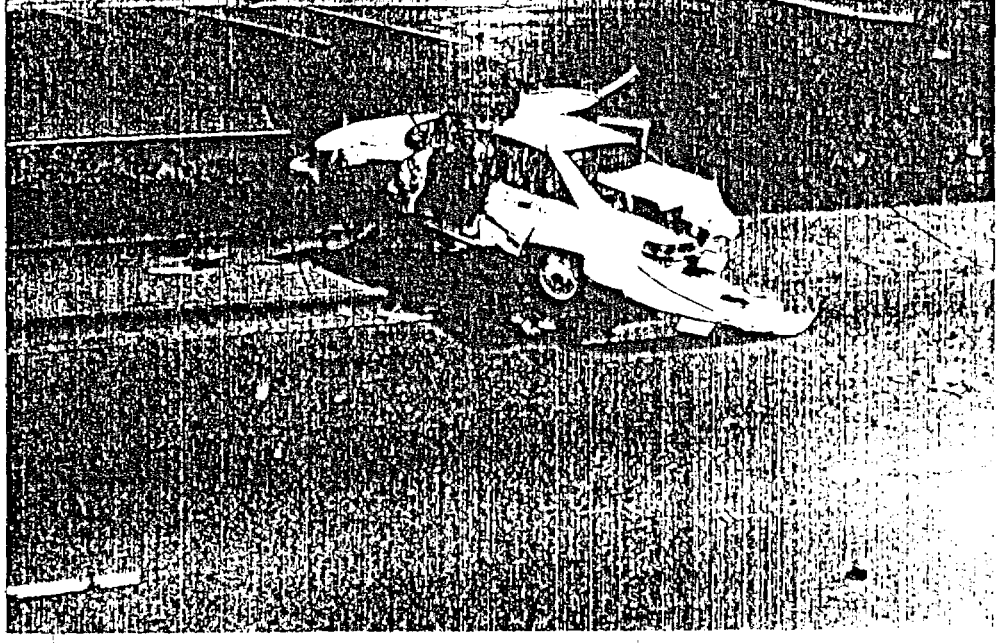

These photos are stored at the Historical Society, 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

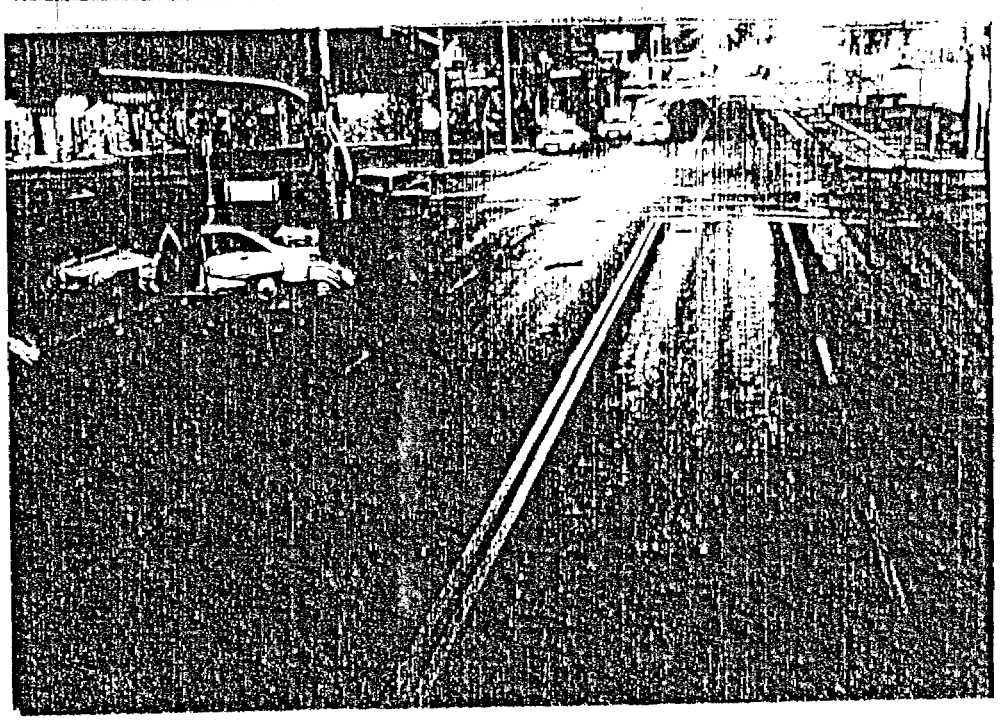

EXHIBIT 1
DATE 1-20-93

EXHIBIT 2
DATE 1-20-93
SB 157 HB

# CITY OF BILLINGS
# POLICE DEPARTMENT

WAYNE R. INMAN
CHIEF OF POLICE

P.O. BOX 1554
BILLINGS, MT 59103

January 19, 1993

Chief Bill Ware
Helena Police Department
Helena, Montana

Dear Chief Ware,

I understand that the Judiciary Committee is hearing an amendment to section 61.8.714 MCA, at 9 a.m. on January 20th. This bill deals with the penalty for driving under the influence of alcohol or drugs. Because of the late notification, neither I nor Assistant Chief Dave Ward will be able to attend in person. This bill is of great importance to the Billings Police Department and to the community we serve. Would you please share my letter with the Committee members, and if time permits, please highlight the important points to the Committee.

As you know, we almost lost a police officer to a DUI driver who had two convictions prior to the accident on September 19, 1992. I cannot express the frustration felt by this Police Department and the community of Billings that the law had failed to deal with this multiple offender. This Police Department received many phone calls and letters expressing outrage that our society had failed to keep this menace to the community off the streets.

Representative Randy Vogel's bill would take a giant step toward filling the vacuum that currently exists in addressing the repeat DUI offender. I'd like to emphasize that this bill is aimed toward the THIRD offender. One DUI is one too many; two is inexcusable; three demands that this state take some action to assure that a fourth doesn't occur.

The last legislature recognized the magnitude of drinking and driving and specified enhanced jail sentences. The time has come when the instrumentality of the offense, the driver's vehicle, be removed. If the drunk doesn't have a vehicle to drive, he/she won't be driving. Of course we can argue that the drunken driver will be able to find another vehicle. Perhaps they can, but at least some if not many of the drivers can't find the alternative vehicle and are not on the streets and highways

of this state trying to kill themselves or worse yet, innocent members of our community. Representative Vogel's bill adequately addresses the issue of the common carrier, the vehicle used without the permission of the owner, and the security interest holder.

I will continue to support education and prevention as a long term solution, but we need to take some very effective preventative action now in conjunction with the education efforts which are long term in effect.

Let me leave you with some statistics from the enforcement efforts of the Billings Police Department:

During 1991, 1044 DUI's were arrested. During 1992, 1140 DUI's were arrested. That is an increase of 9.2%. Approximately 60% of the 1992 DUI arrests were repeat offenders. Of the five fatal accidents in the City of Billings during 1992, four involved alcohol.

Whatever education and punitive measures we have in place at the present time appear to be marginally effective at best. We owe the citizens of this state a strong stand on the issue of the DUI driver.

Sincerely,

Wayne R. Inman
Chief of Police

c: Mark Watson, City Administrator
Bruce McCandless, Assistant City Administrator

Testimony: Did not testify

**HOUSE OF REPRESENTATIVES**

**WITNESS STATEMENT**

**PLEASE PRINT**

**NAME** Roger Tippy **BILL NO.** HB157

**ADDRESS** 1215 11th Ave **DATE** 1-21-93

**WHOM DO YOU REPRESENT?** Montana Beer & Wine Wholesalers Assn.

**SUPPORT** X **OPPOSE** _____ **AMEND** _____

**COMMENTS:**

An ordinance of the city of Portland, Oregon contains similar forfeiture provisions. It seems to be effective. The beverage industry does not need or want the business of persistent DUI offenders. We recognize that amendments may be suggested in several areas and believe this bill can be made to work.

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Amendment passed 16-2 with REPS. SAYLES and BERGMAN voting no.

Motion: REP. BROOKE moved to strike section 6 from the bill.

Discussion:

REP. BROOKE said section 6 victimizes women/girls who don't have the courage or financial backing for proper medical care. They should be allowed every right through the courts when delivering a pregnancy. REP. BROOKE would like to have in law exactly what a women has to do should a baby be delivered disfigured.

Vote: The question has been called on the amendment to strike section 6 from the bill. Amendment fails 7-10.

Motion: REP. BROWN MOVED HB 346 BE TABLED.

Discussion:

REP. McCULLOCH said he lost most of his voice in an operation. He said that people don't realize how vulnerable they are until they lose a function they took for granted. REP. McCULLOCH further pointed out that if a cap is put on these liabilities, it will increase lawyer's fees. This bill is a contradiction, and he favors the table motion of REP. BROWN.

Vote: HB 346 BE TABLED. Motion carried 10-8. Those voting for the table motion were REPS. BROWN, BIRD, BROOKE, GRIMES, McCULLOCH, RUSSELL, TOOLE, WHALEN, WINSLOW and WYATT. Those voting against the table motion were CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, CLARK, RICE, SAYLES, SMITH and TASH.

## EXECUTIVE ACTION ON HB 499

Motion/Vote: REP. CLARK MOVED HB 499 DO PASS. Motion carried unanimously 18-0. Bill will be placed on the consent calendar.

## EXECUTIVE ACTION ON HB 496

Motion: REP. WYATT MOVED HB 496 DO PASS.

Motion/Vote: REP. WYATT moved to adopt the Human Rights Commission amendments. Motion carried unanimously.

Motion/Vote: REP. WYATT MOVED HB 496 DO PASS AS AMENDED. The motion carried 18-0. Bill will be placed on the consent calendar.

## EXECUTIVE ACTION ON HB 157

Motion: REP. VOGEL MOVED HB 157 DO PASS.

**Discussion:**

Mr. MacMaster explained amendments. **EXHIBIT 18**

**REP. BROWN** referred to subsection 5 of page 3 and asked if the language provides for a spouse to have the vehicle returned. **Mr. MacMaster** said in the drug forfeiture law, and also in the bill as written, there is a statement saying that the judge at forfeiture proceedings can do anything he thinks necessary to protect the rights of innocent people.

**Motion/Vote:** **REP. VOGEL** moved the amendments. The amendments passed 13-4. **REP. RUSSELL** was excused from voting.

**Motion/Vote:** **REP. VOGEL MOVED HB 157 DO PASS AS AMENDED.** Motion failed on a 9-9 tie vote. Those voting to pass the bill were **CHAIRMAN FAGG, REPS. VOGEL BERGMAN, CLARK, GRIMES, RICE, SAYLES, SMITH,** and **TASH.** Those voting not to pass the bill were **REPS. BROWN, BIRD, BROOKE, McCULLOCH, RUSSELL, TOOLE, WHALEN, WINSLOW** and **WYATT.**

**Motion/Vote:** **REP. CLARK MOVED HB 157 BE TABLED.** Motion carried 10-8. Those voting to table the bill were **REPS. BROWN, BIRD, BROOKE, CLARK, McCULLOCH, RUSSELL, TOOLE, WHALEN, WINSLOW** and **WYATT.** Those voting not to table the bill were **CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, GRIMES, RICE, SAYLES, SMITH,** and **TASH.**

## ADJOURNMENT

**Adjournment:** 12:00 p.m.

Russell Fagg
REP. RUSSELL FAGG, Chairman

Beth Miksche
BETH MIKSCHE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE Feb 12, 93

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| Rep. Russ Fagg, Chairman | ✓ | | |
| Rep. Randy Vogel, Vice-Chair | ✓ | | |
| Rep. Dave Brown, Vice-Chair | ✓ | | |
| Rep. Jodi Bird | ✓ | | |
| Rep. Ellen Bergman | ✓ | | |
| Rep. Vivian Brooke | ✓ | | |
| Rep. Bob Clark | ✓ | | |
| Rep. Duane Grimes | ✓ | | |
| Rep. Scott McCulloch | ✓ | | |
| Rep. Jim Rice | ✓ | | |
| Rep. Angela Russell | | | ✓ |
| Rep. Tim Sayles | ✓ | | |
| Rep. Liz Smith | ✓ | | |
| Rep. Bill Tash | ✓ | | |
| Rep. Howard Toole | ✓ | | |
| Rep. Tim Whalen | ✓ | | |
| Rep. Karyl Winslow | ✓ | | |
| Rep. Diana Wyatt | ✓ | | |
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HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2-12-93 BILL NO. HB 157 NUMBER 18

MOTION: Motion to table carried 10-8

| NAME | AYE | NO |
|---|---|---|
| Rep. Russ Fagg, Chairman | | ✓ |
| Rep. Randy Vogel, Vice-Chair | | ✓ |
| Rep. Dave Brown, Vice-Chair | ✓ | |
| Rep. Jodi Bird | ✓ | |
| Rep. Ellen Bergman | | ✓ |
| Rep. Vivian Brooke | ✓ | |
| Rep. Bob Clark | ✓ | |
| Rep. Duane Grimes | | ✓ |
| Rep. Scott McCulloch | ✓ | |
| Rep. Jim Rice | | ✓ |
| Rep. Angela Russell | ✓ | |
| Rep. Tim Sayles | | ✓ |
| Rep. Liz Smith | | ✓ |
| Rep. Bill Tash | | |
| Rep. Howard Toole | ✓ | |
| Rep. Tim Whalen | ✓ | |
| Rep. Karyl Winslow | ✓ | |
| Rep. Diana Wyatt | ✓ | |
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EXHIBIT 18
DATE 2-12-93
HB157

Amendments to House Bill No. 157
First Reading Copy

For the Committee on the Judiciary

Prepared by John MacMaster
February 8, 1993

1. Title, line 5.
Following: "DRUGS"
Insert: "AND FOR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE"

2. Title, line 8.
Following: "DRUGS"
Insert: "OR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE"
Strike: "SECTION"
Insert: "SECTIONS"

3. Title, line 9.
Following: "61-8-714"
Insert: "AND 61-8-722"

4. Page 4, line 9.
Strike: "sections 2 through 9"
Insert: "section 3"

5. Page 7, line 16, through page 14, line 22.
Strike: sections 2 through 9 of the bill in their entirety
Insert: "Section 2. Section 61-8-722, MCA, is amended to read:

"61-8-722. **Penalty for driving with excessive alcohol concentration.** (1) Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3)(a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be forfeited as provided under [section 3].

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or

omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then the prior offense must be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

EXHIBIT #18
DATE 2-12-93
HB-157

NEW SECTION. Section 3. Forfeiture procedure. (1) A motor vehicle forfeited under 61-8-714 or 61-8-722 must be seized by the county sheriff within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-201(1) must be instituted by the county sheriff within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-714(3)(b)(ii) or 61-8-722(3)(b)(ii) or by proving that the owner was not convicted of a third or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests, and next to the sheriff in the amount of the costs of the forfeiture proceedings, and the remainder to the department of corrections and human services to fund alcohol information courses and treatment programs referred to in 61-8-714 and 61-8-722.

(5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section, but is found by the court to be without fault."

6. Page 14, line 24.
Strike: "Sections 2 through 9] are"
Insert: "Section 3] is"

7. Page 15, line 2.
Strike: "sections 2 through 9"
Insert: "section 3"

out of state and carrying concealed weapons follow proper procedures.

Motion/Vote: REP. VOGEL moved an amendment to delete section 3 from the bill. Motion carried 17-1 with REP. BROWN voting no.

Motion: REP. BROWN MOVED HB 582 DO PASS AS AMENDED.

Motion/Vote: REP. VOGEL MOVED TO TABLE HB 582. Motion carried 9-8 with REP. SAYLES not voting. Those voting not to table the bill were REPS. BROWN, BIRD, CLARK, MCCULLOCH, TASH, TOOLE, WHALEN and WYATT.

## EXECUTIVE ACTION ON HB 597

Motion: REP. WHALEN MOVED HB 597 DO PASS.

Discussion:

CHAIRMAN FAGG is opposed to HB 597 for three reasons: 1) He doesn't think taxpayers should pick up the tab for a person who decides to have a jury trial. 2) It's important to note on page 1, line 11, that the court may require a convicted defendant of a misdemeanor to pay costs now, and it has been CHAIRMAN FAGG'S experience with jury trials, that if it's a legitimate jury trial, then the court does not assess costs. However, when the defendant really doesn't have a case, the court does assess jury costs. He believes that discretion should be left with the District, City or Justice Court. 3) There will be a small budget crunch on clerks. Jury trials cost between $300 and $350 for a typical six-person jury and about double for a typical 12-person jury. Typically, jury costs are never awarded in District Court cases. They are awarded most often in City and Justice Court.

REP. VOGEL said people do have trials in City Court to create a financial burden on the city. This causes overtime costs and an inconvenience to the city. For these reasons, he believes that people should pay for their own jury trials.

REP. WHALEN disagreed with REP. VOGEL'S comments, stating that the U.S. Constitution entitles people to a trial jury whether they can pay for it or not.

Vote: REP. VOGEL MOVED THAT HB 597 BE TABLED. Motion carried 11-7 with REP. SAYLES excused from voting. Those voting to table the bill are CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, BROOKE, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH, and WINSLOW.

## EXECUTIVE ACTION ON HB 157

Motion: REP. VOGEL MOVED TO RECONSIDER HB 157. Motion carried 11-7. Those voting against the reconsideration were

**REPS. BROWN, BIRD, BROOKE, MCCULLOCH, RUSSELL, TOOLE, WYATT.**

Discussion:

**REP. VOGEL** said a similar law was passed in Oregon two years ago; in two years time, the number of DUI-related fatalities in Oregon has been reduced BY 38 percent. The bill has been reworked by **REP. RICE.**

Vote: **HB 157 TO BE OFF TABLE.** Motion carried 11-7. Those voting against the reconsideration are **REPS. BROWN, BIRD, BROOKE, MCCULLOCH, RUSSELL, TOOLE, WYATT.**

Motion: **REP. VOGEL MOVED HB 157 DO PASS.**

Discussion:

**REP. VOGEL** said one of the changes made in the bill was to allow the judge more discretion to return a forfeited vehicle to the family.

Vote: **HB 157 DO PASS.** Motion carried 11-7. Those voting against the do pass motion were **REPS. BROWN, BIRD, BROOKE, MCCULLOCH, RUSSELL, TOOLE,** and **WYATT.**

## EXECUTIVE ACTION ON HB 562

Motion: **REP. RICE MOVED HB 562 DO PASS AND OFFERED AMENDMENTS.**

Discussion:

**REP. RICE** offered a conceptual amendment. He had spoke with sociologists working in the area of homophilia who use materials of pictures of sexual conduct as part of the therapy process; they were concerned that this ability not be taken away. **REP. RICE** said he had no objection to that and offered an amendment that **Mr. MacMaster** will prepare. The amendment will say, "this is not applicable to sex offender treatment programs."

Motion/Vote: **CHAIRMAN FAGG** moved to amend HB 562. Amendment carried unanimously.

Motion/Vote: **REP. RICE** moved an amendment to leave "possesses with intent to sell" as a felony, and "possession" as a misdemeanor. Amendment carried unanimously.

Motion: **REP. RICE MOVED HB 562 DO PASS AS AMENDED.**

Motion/Vote: **REP. TOOLE** moved an amendment to strike "proceeding and purchasing" from the bill. Amendment carried unanimously.

vote: **HB 562 DO PASS AS AMENDED.** Motion carried unanimously.

# HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 2/17/93

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| Rep. Russ Fagg, Chairman | ✓ | | |
| Rep. Randy Vogel, Vice-Chair | ✓ | | |
| Rep. Dave Brown, Vice-Chair | ✓ | | |
| Rep. Jodi Bird | ✓ | | |
| Rep. Ellen Bergman | ✓ | | |
| Rep. Vivian Brooke | ✓ | | |
| Rep. Bob Clark | ✓ | | |
| Rep. Duane Grimes | ✓ | | |
| Rep. Scott McCulloch | ✓ | | |
| Rep. Jim Rice | ✓ | | |
| Rep. Angela Russell | ✓ | | |
| Rep. Tim Sayles | | | ✓ |
| Rep. Liz Smith | ✓ | | |
| Rep. Bill Tash | ✓ | | |
| Rep. Howard Toole | ✓ | | |
| Rep. Tim Whalen | ✓ | | |
| Rep. Karyl Winslow | ✓ | | |
| Rep. Diana Wyatt | ✓ | | |
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HOUSE STANDING COMMITTEE REPORT

February 17, 1993



Mr. Speaker: We, the committee on Judiciary report that 157 (first reading copy -- white) do pass as amended .

Signed: _____

Russ Fagg, Chair

And, that such amendments read:

1. Title, line 5.
Following: "DRUGS"
Insert: "AND FOR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE"

2. Title, line 8.
Following: "DRUGS"
Insert: "OR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE"
Strike: "SECTION"
Insert: "SECTIONS"

3. Title, line 9.
Following: "61-8-714"
Insert: "AND 61-8-722"

4. Page 4, line 9.
Strike: "sections 2 through 9"
Insert: "section 3"

5. Page 7, line 16, through page 14, line 22.
Strike: sections 2 through 9 of the bill in their entirety
Insert: "Section 2. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive alcohol concentration. (1) Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3)(a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours

Committee Vote:
Yes 11, No 7.

or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be forfeited as provided under [section 3].

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then the prior offense must be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed

under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

NEW SECTION. Section 3. Forfeiture procedure. (1) A motor vehicle forfeited under 61-8-714 or 61-8-722 must be seized by the county sheriff within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-201(1) must be instituted by the county sheriff within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-714(3)(b)(ii) or 61-8-722(3)(b)(ii) or by proving that the owner was not convicted of a third or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests, and next to the sheriff in the amount of the costs of the forfeiture proceedings, and the remainder to the department of corrections and human services to fund alcohol information courses and treatment programs referred to in 61-8-714 and 61-8-722.

(5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section, but is found by the court to be without fault."

6. Page 14, line 24.

Strike: "Sections 2 through 9] are"
Insert: "Section 3] is"

7. Page 15, line 2.
Strike: "sections 2 through 9"
Insert: "section 3"

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2/17/93 BILL NO. HB 157 NUMBER 18

MOTION: HB 157 Be Reconsidered off Table
Motion Carried 11-7

| NAME | AYE | NO |
|---|---|---|
| Rep. Russ Fagg, Chairman | ✓ | |
| Rep. Randy Vogel, Vice-Chair | ✓ | |
| Rep. Dave Brown, Vice-Chair | | ✓ |
| Rep. Jodi Bird | | ✓ |
| Rep. Ellen Bergman | ✓ | |
| Rep. Vivian Brooke | | ✓ |
| Rep. Bob Clark | ✓ | |
| Rep. Duane Grimes | ✓ | |
| Rep. Scott McCulloch | | ✓ |
| Rep. Jim Rice | ✓ | |
| Rep. Angela Russell | | ✓ |
| Rep. Tim Sayles | ✓ | |
| Rep. Liz Smith | ✓ | |
| Rep. Bill Tash | ✓ | |
| Rep. Howard Toole | | ✓ |
| Rep. Tim Whalen | ✓ | |
| Rep. Karyl Winslow | ✓ | |
| Rep. Diana Wyatt | | ✓ |
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| | 11 | 7 |

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2/17/93 BILL NO. HB 157 NUMBER 18

MOTION: HB 157 DO Pass 11-7

| NAME | AYE | NO |
|---|---|---|
| Rep. Russ Fagg, Chairman | ✓ | |
| Rep. Randy Vogel, Vice-Chair | ✓ | |
| Rep. Dave Brown, Vice-Chair | | ✓ |
| Rep. Jodi Bird | | ✓ |
| Rep. Ellen Bergman | ✓ | |
| Rep. Vivian Brooke | | ✓ |
| Rep. Bob Clark | ✓ | |
| Rep. Duane Grimes | ✓ | |
| Rep. Scott McCulloch | | ✓ |
| Rep. Jim Rice | ✓ | |
| Rep. Angela Russell | | ✓ |
| Rep. Tim Sayles | ✓ | |
| Rep. Liz Smith | ✓ | |
| Rep. Bill Tash | ✓ | |
| Rep. Howard Toole | | ✓ |
| Rep. Tim Whalen | ✓ | |
| Rep. Karyl Winslow | ✓ | |
| Rep. Diana Wyatt | | ✓ |
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| | 11 | 7 |

# MINUTES

## MONTANA SENATE
## 53rd LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** By Senator Bill Yellowtail, on March 22, 1993, at 10:00 a.m.

## ROLL CALL

**Members Present:**

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. David Rye (R)
Sen. Tom Towe (D)

**Members Excused:** Sen. Crippen, Sen. Harp

**Members Absent:** NONE

**Staff Present:** Valencia Lane, Legislative Council
Kathy Collins, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

| | |
|---|---|
| Hearing: | HB 157 |
| | HB 278 |
| | HB 525 |
| Executive Action: | HB 506 |
| | HJR 22 |
| | HB 633 |

## HEARING ON HB 157

Opening Statement by Sponsor:

Representative Randy Vogel, House District 86, stated HB 157 would allow for the seizure of an owner's vehicle upon the owner's third DUI offense. Representative Vogel said this is not a radical approach; ten states now have similar legislation, and two of those states take the vehicle after the first offense. Representative Vogel stated there were approximately 2500 alcohol related accidents in Montana in 1992, resulting in over 2200

injuries and 97 fatalities. Representative Vogel stated between 500 and 600 DUI convictions were third time convictions. Representative Vogel handed out copies of a newspaper article pertaining to this issue (Exhibit #1). Representative Vogel said the intent of HB 157 is to keep multiple DUI offenders off Montana's streets and highways.

**Proponents' Testimony:**

Albert Goke, Administrator, Highway & Traffic Safety Division, Department of Justice, stated he has been involved in the DUI issue for many years, and he came forth today to add his support of HB 157. Mr. Goke stated at times the most important thing legislation can accomplish is to create a deterrent for those who have not yet been convinced by the laws already in place. Mr. Goke stated HB 157 could serve as an effective deterrent for driving under the influence.

Dr. Rick Lamb, emergency medicine physician, Deaconess Hospital, Billings, stated he supported HB 157. Dr. Lamb said he has seen too many cases of accident victims as a result of multiple DUI offenders in the emergency room, and there is overwhelming support for HB 157 in the medical profession in Montana.

Tom Harrison, representing the Montana Sheriffs and Peace Officers Association, stated the Association supported HB 157.

Bill Leary, representing the Montana Bankers Association, stated he supported HB 157.

Senator Tom Towe said he would like the record to show he supported HB 157.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Doherty asked Representative Vogel if the third offense had to be within a certain time frame. Representative Vogel stated presently it would be three offenses at any time. Senator Doherty stated three offenses in a lifetime might not indicate a propensity for that kind of activity, and he asked Representative Vogel how he would react to three offenses in a specified time period. Representative Vogel said, "no bill is perfect, and all are subject to change."

Senator Franklin asked Representative Vogel what the counties or cities would do with the seized vehicles. Representative Vogel stated they would be handled through a sheriff's sale, as all seized property is handled.

Senator Towe asked Representative Vogel what changes HB 157 had undergone. Representative Vogel stated the subcommittee felt they would be better off with the statutes, rather than dealing with an entirely new bill. Representative Vogel said the escape clause for an innocent victim was added to HB 157.

Senator Towe asked Representative Vogel about the parts of Sections 1 and 2 that deal with defenses. Representative Vogel stated those defenses refer back to the statute, which states the violator must be the registered owner of the vehicle to be seized.

Senator Doherty asked Representative Vogel what happens when a couple jointly owns a vehicle and one partner is subject to his or her vehicle being seized. Representative Vogel said the subcommittee addressed this issue and decided that most vehicles are owned by two parties, but in most cases, a couple owns two vehicles.

Senator Towe asked Representative Vogel if there had been any discussion as to what an innocent party's defense might include. Representative Vogel stated in some cases a young adult might have joint ownership of a vehicle with one of his or her parents, and with the defenses for the innocent party, the young adult would be allowed to keep said vehicle if one of the parents were to be subject to vehicle seizure.

Closing by Sponsor:

Representative Vogel distributed copies of two other newspaper articles (Exhibit #2) and stated there is frustration both on the part of the peace officers and the courts in regard to DUI offenders. Representative Vogel stated HB 157's intent is to serve as a deterrent to multiple DUI offenses in the hopes of saving lives.

# ROLL CALL

SENATE COMMITTEE Judiciary DATE 3-22-93

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| Senator Yellowtail | ✓ | | |
| Senator Doherty | ✓ | | |
| Senator Brown | ✓ | | |
| Senator Crippen | | | ✓ |
| Senator Grosfield | | | |
| Senator Halligan | ✓ | | |
| Senator Harp | | | ✓ |
| Senator Towe | ✓ | | |
| Senator Bartlett | ✓ | | |
| Senator Franklin | ✓ | | |
| Senator Blaylock | ✓ | | |
| Senator Rye | ✓ | | |
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EOR

Attach to each day's minutes

SENATE JUDICIARY
EXHIBIT NO. 2
DATE 3-22-93
BILL NO. HB 157

buildings and reversing the process in the summer to provide cooling.

While the geothermal system will cost about a million dollars more to install than simply replacing the school's existing gas-fired system, the college will get that money back immediately, in the form of a $1.1 million rebate from Atlantic Electric Co.

The utility offers rebates to all customers who install energy-efficient systems. "It means utilities have less dramatic swings in the demand for power," says Susan Coan, an Atlantic Electric spokeswoman. "We can add new customers without adding new plants."

Other sources of funding for the new system include $1.4 million from a state bond issue and a $2.3 million grant from the state Department of Environmental Protection and Energy.

Stockton State is hardly the first public facility to go geothermal. In addition to commercial buildings and about 125,000 homes that use the technology, five elementary schools in Austin, Texas, and the Oklahoma State Capitol building use geothermal heating, according to Conn Abnee, construction engineering manager for the East Kentucky Power Cooperative.

*—Laura Locke*

*For more information, contact Charles Tantillo, Senior Vice President, Stockton State College, Pomona, NJ 08240-9988; phone 609-652-4381.*

## ANTHONY HOOPER: WOUNDED AT FREDERICKSBURG

**Anyone who thinks being a city manager is all administration and no politics hasn't looked at the job lately. As the high rate of turnover attests, any prudent manager has to spend a fair amount of time just navigating the political currents among his or her bosses.**

**Just ask Anthony Hooper, who until last fall was the city manager of Fredericksburg, Virginia, a historic and very pretty town of about 20,000 halfway between Richmond and Washington, D.C. In September, on a 4-3 vote by the city council, Hooper lost his post after six years on the job. And the town has been in chaos ever since.**

**Hooper's firing came as something of a shock to many of the residents. He had been given high marks for moving Fredericksburg forward on several important capital projects—wastewater treatment, library renovation, a new middle school. He got the axe without any warning, in a late-night, closed-door meeting.**

**To understand what happened, you have to know a little about Fredericksburg politics. For some time, the city council has been divided between two loosely defined factions. One, led by Mayor Lawrence Davies, is grouped around the Democratic Party, the black community and an assortment of preservationists and professionals. The other, led by Vice Mayor Gordon Shelton, includes Republicans, some business people and a variety of blue-collar and middle-class residents. Until last May, Davies' group had a one-vote majority on the council. That changed in an election that saw Davies' leading ally lose his seat to one of the mayor's more outspoken critics.**

**The new council majority had different ideas from the old one about the role of a city manager—they wanted to shorten the manager's rein. Just as important, Shelton's faction had complained that Hooper seemed to pay more attention to Davies and his allies than to them.**

**Hooper denies any favoritism of that sort. But he does allow that he may have paid too much attention to analyzing issues, recommending policies and administering the government—all the things a city manager is ostensibly hired to do. "I didn't spend a lot of time courting individual council members," he says. "Maybe in the future I need to pay more attention to those relationships."**

**After a rally to protest the firing, a full-page ad in the newspaper signed by 800 citizens and the launching of a recall petition, one of Shelton's council allies resigned, leaving the council evenly split. It is in that atmosphere of mutual hostility that the new manager will have to be chosen. But whoever Hooper's replacement turns out to be, dealing with a factionalized city—and staying politically well positioned—seem certain to be high on the agenda.**

***—Rob Gurwitt***

## The Car-Seizure Idea: It's Catching

Police in Portland, Oregon, have sent a clear message to more than 1,200 people caught driving drunk or soliciting prostitutes: Take a hike.

Portland raised some eyebrows three years ago with a city ordinance allowing police to seize the cars of motorists who either solicit prostitutes or who are repeat drunk drivers *(see* GOVERNING, *November 1991, page 18.)* Some civil liberties groups expressed concern about the car seizures, but neighborhood groups welcomed the law.

Since its enactment, the ordinance has had a significant impact, according to a recent report filed by the city's police department and the Office of Public Works. Fatal accidents involving alcohol have decreased by 38 percent since 1990, according to the report, and neighborhood leaders and poice officers report a dramatic reduction in the number of prostitutes seen in areas where customers' cars have been seized.

Portland's program has spawned similar efforts across the country. Four communities—Washing-

## MIKE LOWRY: THE SATISFACTION OF AN ANGRY MAN

Over more than 20 years in government, in a career that stretches back to his days as a staffer in the Washington state legislature, neither friends nor foes have ever been quite sure what to make of Mike Lowry. He was either the most genial malcontent in politics or else the world's nicest angry man. He could work himself into a liberal lather, pound the table, curse the Chamber of Commerce—and still come off to those he denounced as a guy they wouldn't mind having a beer with once it was all over.

For years, people said that a man that friendly could go a long way in politics, but a man that dogmatic couldn't win statewide. And Lowry, despite five solid victories in a Seattle congressional district, seemed to prove the conventional wisdom right by losing twice for the U.S. Senate, in 1983 and 1988. This past November, though, he proved the same wisdom wrong. This month, at age 53, he will take office as governor of Washington.

And he did it his way. In the Democratic primary, when his opponent denounced his p chant for costly social programs and refusal to make an a income-tax pledge, and in the general election, when the Rep lican chairman called him "the captive of left-wing intere groups," Lowry stuck by his promise not to do any negati campaigning. In fact, he suggested that one of the Republic gubernatorial candidates had been treated unfairly in the G primary, and that he would love to have him as a member of h cabinet. By the end of the campaign, he was drawing suppo from Republicans who just a couple of years before had seem to view him as the devil incarnate.

The most interesting question, though, is not whether Low is too liberal to be governor. It is whether "Mad as Hell" Mi can transform himself into the calm, statesmanlike leader h may have to be to succeed in his new office. He seems to unde stand he can't govern the state as a gadfly. "I've grown up," h insists. "I'm ready for real work."

But he is the same Mike Lowry in one way: He is always wi ing to poke fun at himself, even at the most sensitive aspects o his reputation, such as the lingering belief that he is a litt flaky to sit in a governor's chair. Last year, he confided to an audience that his own mother had questioned his decision t run. "Why in the world would anyone want to be governor?" Lowry quoted her as saying. "You'd have to be crazy." Righ then, Lowry said, "I realized I was qualified." —*Alan Ehrenhal*

ton, D.C.; Milwaukee; Long Beach, California; and Deschutes County, Oregon—have enacted automobile forfeiture programs, and some 60 communities have contacted Portland for information about the program over the past year and a half.

"We don't consider it to be a punishment. It's removing a nuisance," says Sergeant Roger Hediger, whose seizure and forfeiture unit typically impounds between 16 and 18 cars a night. Hediger says the rate of repeat offenses is running under 2 percent.

One budgetary advantage of the seizure program is that offenders must cover the cost of enforcement, towing and storage. After tallying the costs of the operation, the police department estimates that it comes close to breaking even.

But the rewards appear to be much more than financial. "If you can stop one of those drivers," says Hediger, "you have the potential for saving at least one life."

—*Jeanne Ponessa*

*For more information, contact Sergeant Roger Hediger, Portland Police Bureau, 1111 S.W. 2nd Ave., Portland, Oregon 97204; phone 503-796-3023.*

## Will Good Times Follow A Record Bond Market?

The hyperactivity of the 1992 municipal bond market—a record $270 billion was issued—sends out an upbeat message for 1993: Some form of economic recovery is on its way, and state and local governments are among the first to feel it.

Ironically, the best news comes from a leveling-off in the short-term side of the market. It suggests, among other things, that state and local governments have decreased their reliance on emergency borrowings to cope with unexpected revenue shortfalls.

Short-term borrowing cooled off for another reason. Short-term interest rates, which had been significantly lower than long-term rates in 1991, inched closer to long-term marks in 1992. This made it more economical for state and local governments to go straight to the long-term market to borrow money for infrastructure projects. When short-term rates are significantly lower, issuers often borrow in that market for the beginning stages of a project.

Long-term borrowings were the mirror image of the short-term market. They exploded upward in 1992, reaching an all-time high of $230 billion. This does not necessarily reflect a rush to finance new infrastructure projects. Rather, at a rate of two to one, the long-term

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3-22-93
HB 157

SHELBY – ...ne school board will accept applications through April 7 in the ... the old "Re... eliminates two sharp ... that led to the old bridge.

Great Falls Tribune March 19, '93

# Driver sentenced for double DUIs

A Great Falls driver has been sentenced to jail in both Lewis and Clark and Cascade counties for driving under the influence of intoxicants.

Rick Dean Logan, 30, of 517 6th Ave. N., began serving a six-month sentence for one DUI in the Lewis and Clark County Jail in Helena on Feb. 16.

Last week, Great Falls City Judge Nancy Luth sentenced Logan to begin serving time for his sixth DUI along with the Lewis and Clark sentence.

Logan will be returned to Great Falls in August to serve 30 days in the Cascade County Jail before entering a 98-day chemical treatment program through the Salvation Army, officials said.

Logan was arrested last June 22 after a personal injury accident at 3rd Street and the Northwest Bypass, Great Falls authorities said Thursday.

He pleaded guilty in Great Falls' city court on Feb. 5 to three charges: DUI, being an habitual offender and not having proof of liability insurance.

Besides his sentence for DUI, Logan was ordered to pay $1,000 in restitution as part of his penalty for driving as an habitual offender.

The fine for failure to show proof of insurance on the car which was registered to someone else was suspended.

**There's more**
Montana news on 7A, 6D

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# Habitual DUIs to go before district judges

Butte Standard
22 March 93

**By Tina Vander Veer**
**Standard Staff Writer**

Chronic drunk drivers in Butte will probably find themselves facing a district judge instead of a police judge from now on, Butte-Silver Bow prosecutors say.

When dealing with fourth-time DUI offenders and up, prosecutors have decided to file most DUI charges in Butte District Court rather than in police court, Chief Deputy County Attorney Brad Newman said Friday.

Newman said the change comes at the request of Police Judge Joe Russell, who has expressed frustration with repeat offenders.

"He doesn't feel the police court sanctions are scaring them off," Newman said.

That's true, Russell said. "After a third offense, there has to be something wrong if it's not getting through to them," he said.

At the third-offense level, even police court sanctions for DUI are harsh: A typical sentence includes a fine of between $750 and $1,000, at least 10 days in jail, and a round of mandatory alcohol treatment.

Many repeat offenders also have suspended or revoked licenses and no insurance, adding another layer of fines to the DUI sentence. Together, the fines from a third-offense DUI case can easily top $2,000.

Still, Russell has seen a sharp increase in the numbers of second and third-offense DUI cases recently, proving that hefty fines and a few days in jail don't discourage everyone.

Since typical fines don't work, Russell thinks fourth-time offenders should have to explain themselves to the district judge.

"When a person gets up to a

Please see DRUNK Page 10

# Drunk

Continued from Page 1

fourth-offense DUI, I think it's a very serious crime," he said.

Whether in police court or in district court, driving under the influence of an intoxicant is always a misdemeanor. Moving DUI cases to district court won't turn them into felonies or change sentencing guidelines.

Distict judges, however, do have more options for punishment than a police judge, prosecutor Newman said. For example, district judges can commit offenders to Galen for alcohol treatment, something police judges can't do.

And because a cadre of adult probation officials are enforcing the judges' orders, a "no-drinking" mandate from a district judge carries more punch than that of a police judge, Newman said. Probation offers "some guarantee that (offenders) are going to be watched and followed up on," he said.

Essentially, "you can actually interfere with somebody's life a little bit longer" in district court, Newman said.

Psychology can also play to the court's advantage. District court's big, echoing courtrooms and high benches might intimidate repeat offenders more than the tiny, almost cozy police court does, Russell said.

Sending DUI cases to district court isn't the only way to get tough on repeat offenders. For example, Russell could sentence fourth-time offenders to a full year in jail, rather than imposing the minumum jail sentence as is his habit.

But doing so, he said, is expensive for the county and doesn't get to the heart of the problem: That chronic drunk drivers are, first and foremost, chronic drunks.

"They'll sit in that jail and rot" rather than admit their alcoholism, Russell said. "They don't feel they've got a problem, and they feel they're being picked on."

Treatment is the way to go, Russell said, and district judges have more power to impose and enforce treatment.

"Our whole goal is still, whether they're fouth, fifth or sixth offenders, to get them help," he said.

EXHIBIT 2
DATE 3-22-93
HB 157

DATE 3-22-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: H.B. 157 (Wyss) H.B. 278 (Bardanouve)
H.B. 525 (Rice)

| Name | Representing | Bill No. | Check One: Support | Oppose |
|---|---|---|---|---|
| Bill LEARY | Mt. Bankers Assn | HB 157 | ✓ | |
| Joni Sonderlekl | Dept of Justice AP Div | HB 278 | ✓ | |
| GEORGE BOUSLIMAN | STATE BAR | HB 525 | / | |
| John Stephenson | State Bar | HB 525 | ✓ | |
| Gordon Morris | MHCo | HB 278 HB 525 | ✓ | |
| Alan Gilbreath | MACDC | HB 278 | ✓ | |
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VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

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Senator Bartlett suggested dividing the question.

Chair Yellowtail agreed. Chair Yellowtail told the Committee that they would vote on amendment HB052502.ADB with the exception of item #4.

**Vote:**
The motion to amend HB052502.ABD with the exception of item #4 CARRIED UNANIMOUSLY.

**Discussion:**
Chair Yellowtail told the Committee that they would vote on item #4 in amendment HB052502.ADB.

**Vote:**
The motion to amend item #4 in amendment HB052502.ADB FAILED with Senators Bartlett and Grosfield voting YES.

**Motion/Vote:**
Senator Bartlett moved HB 525 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

## EXECUTIVE ACTION ON HB 396

**Motion:**
Senator Halligan moved to TABLE HB 396.

**Discussion:**
Chair Yellowtail said HB 396 provided that the Department of Justice suspend drivers licenses for a persons refusal to submit to a blood alcohol test.

Senator Halligan told the Committee that HB 396 would be bad policy.

Senator Rye reminded the Committee that Representative Whalen was the only proponent of HB 396.

**Vote:**
The motion to table HB 396 CARRIED UNANIMOUSLY.

## EXECUTIVE ACTION ON HB 157

**Discussion:**

Valencia Lane explained the amendments. (Exhibit #4)

**Motion/Vote:**
Senator Halligan moved to amend HB 157. The motion CARRIED with Senator Crippen voting NO.

**Discussion:**
Senator Doherty asked Ms. Lane about a time frame in which the DUI's would have to occur before the forfeiture of a vehicle. Ms. Lane said current law defines conviction as meaning three or more times in a five year period.

Senator Doherty said many people are demanding that something be done about DUI offenders, but if someone has been convicted more than three times in a five year period something needs to be done to help those people because they may have an illness. Senator Doherty said HB 157 may get peoples attention, but the forfeiture of a car that is owned by people in common may hurt the innocent party.

Senator Halligan said there was a problem with HB 157 because it does not protect the innocent party.

Senator Rye told the Committee that drunk driving was a chosen reprehensible act and the penalty in HB 157 was not too severe.

**Vote:**
Senator Towe moved HB 157 BE CONCURRED IN AS AMENDED.

**Discussion:**
Senator Halligan said a technical clarification needed to be included so offenders would only receive the proceeds of the sale.

Senator Towe said the top of page 19 says, "the proceeds of a sale of a motor vehicle must be distributed first to the holder of the security interest." Senator Towe said it is only talking about the proceeds of the sale.

Senator Halligan said the problem with the language is that if a car has a security interest of $10,000 and the car sells for $5000, the tax payers would have to pay the extra $5,000.

Chair Yellowtail asked Senator Halligan about an amendment addressing the problem of the proceeds.

Senator Halligan said the amendment in concept would say that all the secured party would receive is the amount of money generated from the sale.

Senator Towe suggested adding to the amendment that a motor

vehicle could be taken away if the security interest was more than the value of the car.

Senator Towe withdrew his motion to Be Concurred In As Amended.

**Motion:**
Senator Halligan moved to amend HB 157.

**Discussion:**
Ms. Lane asked for clarification of the amendments. Ms. Lane said the first amendment would say in concept that the holder of the security interest would receive up to the amount of their interest or the amount received in the sale of the car, whichever is less. The second amendment would say in concept that a motor vehicle could be taken away if the security interest was more than the value of the car.

**Vote:**
The motion to amend CARRIED UNANIMOUSLY.

**Motion/Vote:**
Senator Towe moved HB 157 BE CONCURRED IN AS AMENDED. The motion CARRIED with Senators Crippen, Harp, and Doherty voting NO.

## EXECUTIVE ACTION ON HB 411

**Discussion:**
Senator Doherty explained amendment hb041101.avl. (Exhibit #5)

Senator Doherty asked Janet Jessup, Gambling Control Division, if she would oppose amendment hb041101.avl. Ms. Jessup told the Committee that the Gambling Control Division would be opposed to the amendment because it substantially changes the language in HB 411. HB 411 was intended to clarify the legislative intent of the 1991 gambling law. Ms. Jessup said if the amendment passes the Gambling Control Division would not be able to control some devices that are brought into the state because they would be much more difficult to track. Ms. Jessup said the language included in HB 411 would not change current law or impact any jobs, but would cause enforcement problems.

**Motion/Vote:**
Senator Doherty moved to AMEND HB 411. The motion FAILED with Senators Doherty, Franklin, Bartlett and Harp voting YES.

# ROLL CALL

SENATE COMMITTEE Judiciary DATE 3-26-93

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| Senator Yellowtail | X | | |
| Senator Doherty | X | | |
| Senator Brown | X | | |
| Senator Crippen | X | | |
| Senator Grosfield | X | | |
| Senator Halligan | X | | |
| Senator Harp | X | | |
| Senator Towe | X | | |
| Senator Bartlett | X | | |
| Senator Franklin | X | | |
| Senator Blaylock | X | | |
| Senator Rye | X | | |
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FC8

Attach to each day's minutes

# SENATE STANDING COMMITTEE REPORT


March 28, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration House Bill No. 157 (third reading copy -- blue), respectfully report that House Bill No. 157 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 4, line 11.
Strike: "forfeited as"
Insert: "seized and subjected to the procedure"

2. Page 15, line 21.
Strike: "forfeited as"
Insert: "seized and subjected to the procedure"

3. Page 18, lines 11 and 17.
Strike: "COUNTY SHERIFF"
Insert: "arresting agency"

4. Page 19, line 2.
Following: "(4)"
Insert: "(a)"

5. Page 19, line 5.
Following: "INTERESTS"
Insert: "or the amount received from the sale, whichever is less"

6. Page 19, lines 6 and 7.
Strike: "AND" on line 6 through "PROCEEDINGS," on line 7

7. Page 19, line 11.
Following: line 10
Insert: "(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle."

-END-

m- Amd. Coord.
DY Sec. of Senate

Senator Carrying Bill

691653SC.Sma

Amendments to House Bill No. 157
Third Reading Copy

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Greg Petesch
March 25, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3-26-93
BILL NO. #B157

1. Page 4, line 11.
Strike: "forfeited as"
Insert: "seized and subjected to the procedure"

2. Page 15, line 21.
Strike: "forfeited as"
Insert: "seized and subjected to the procedure"

3. Page 18, lines 11 and 17.
Strike: "COUNTY SHERIFF"
Insert: "arresting agency"

4. Page 19, lines 5 through 7.
Following: "INTERESTS" on line 5
Strike: remainder of line 5 through "PROCEEDINGS" on line 7

**Section 1.** Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs. (1) Except as provided in subsections (7) and (8), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(2) Except as provided in subsection (7), on a second conviction, he the person shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection (7), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) (a) Except as provided in subsection (7), on the third or subsequent conviction, he the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less



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than $500 or more than $1,000. Except as provided in subsection (7), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be ~~forfeited as~~ seized and subject to the procedure provided under ~~[sections 2 through 9~~ SECTION 3].

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of

**SECTION 2.** SECTION 61-8-722, MCA, IS AMENDED TO READ:

"61-8-722. Penalty for driving with excessive alcohol concentration. (1) Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) (a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be ~~forfeited as~~ seized and subjected to the procedure provided under [section 3].

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant

fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then the prior offense must be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center



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as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

NEW SECTION. **SECTION 3.** FORFEITURE PROCEDURE. (1) A MOTOR VEHICLE FORFEITED UNDER 61-8-714 OR 61-8-722 MUST BE SEIZED BY THE ~~COUNTY SHERIFF~~ arresting agency WITHIN 10 DAYS AFTER THE CONVICTION AND DISPOSED OF AS PROVIDED IN TITLE 44, CHAPTER 12, PART 2. EXCEPT AS PROVIDED IN THIS SECTION, THE PROVISIONS OF TITLE 44, CHAPTER 12, PART 2, APPLY TO THE EXTENT APPLICABLE.

(2) FORFEITURE PROCEEDINGS UNDER 44-12-201(1) MUST BE INSTITUTED BY THE ~~COUNTY SHERIFF~~ arresting agency WITHIN 20 DAYS AFTER THE SEIZURE OF THE MOTOR VEHICLE.

(3) FOR PURPOSES OF 44-12-203 AND 44-12-204, THERE IS A REBUTTABLE PRESUMPTION OF FORFEITURE. THE OWNER OF THE MOTOR VEHICLE MAY REBUT THE PRESUMPTION BY PROVING A DEFENSE UNDER 61-8-714(3)(b)(ii) OR 61-8-722(3)(b)(ii) OR BY PROVING THAT THE OWNER WAS NOT CONVICTED OF A THIRD OR SUBSEQUENT OFFENSE UNDER 61-8-401 OR 61-8-406. IT IS NOT A DEFENSE THAT THE CONVICTED PERSON OWNS THE MOTOR VEHICLE JOINTLY WITH ANOTHER

PERSON.

(4) FOR PURPOSES OF 44-12-206, THE PROCEEDS OF THE SALE OF THE MOTOR VEHICLE MUST BE DISTRIBUTED FIRST TO THE HOLDERS OF SECURITY INTERESTS WHO HAVE PRESENTED PROPER PROOF OF THEIR CLAIMS, UP TO THE AMOUNT OF THE INTERESTS, ~~AND NEXT TO THE SHERIFF IN THE AMOUNT OF THE COSTS OF THE FORFEITURE PROCEEDINGS~~, AND THE REMAINDER TO THE DEPARTMENT OF ~~CORRECTIONS AND HUMAN SERVICES TO FUND ALCOHOL INFORMATION COURSES AND TREATMENT PROGRAMS REFERRED TO IN 61-8-714 AND 61-8-722~~ GENERAL FUND OF THE ARRESTING AGENCY.

(5) ACTIONS THE COURT MAY TAKE UNDER 44-12-205(3) TO PROTECT THE RIGHTS OF INNOCENT PERSONS INCLUDE RETURN OF THE MOTOR VEHICLE WITHOUT A SALE TO AN OWNER WHO IS UNABLE TO PRESENT AN ADEQUATE DEFENSE UNDER THIS SECTION BUT IS FOUND BY THE COURT TO BE WITHOUT FAULT.

NEW SECTION. **Section 4.** Codification instruction. [~~Sections 2 through 9~~] are SECTION 3] IS intended to be codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [sections 2 through 9 SECTION 3].

-End-